

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MOSES ILIOVITS,

Plaintiff,

v.

ELTMAN LAW PC,

Defendant.

MEMORANDUM & ORDER

18-CV-795 (MKB) (RML)

MARGO K. BRODIE, United States District Judge:

Plaintiff Moses Iliovits commenced the above-captioned putative class action on February 5, 2018, against Defendant Eltman Law PC, asserting claims pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”). (Compl., Docket Entry No. 1.) Plaintiff alleges that Defendant sent him a collection letter “that was deceptive and misleading as it simply identified the ‘Balance,’ but did not indicate that the balance may increase due to interest and fees.” (*Id.* ¶ 12.) By report and recommendation dated March 8, 2019, Magistrate Judge Robert M. Levy *sua sponte* recommended that the Court dismiss Plaintiff’s claims for failure to prosecute (the “R&R”). (R&R 1, Docket Entry No. 6.) For the reasons set forth below, the Court adopts the R&R and dismisses Plaintiff’s claims.

I. Background

After Plaintiff filed his Complaint, Defendant filed a waiver of service on March 27, 2018, and acknowledged that its Answer to the Complaint was due on or before April 9, 2018. (Waiver of Serv., Docket Entry No. 5.) Defendant did not file an Answer. On February 3, 2019, after a long period of inactivity, Judge Levy ordered the parties to show cause why the Court should not dismiss the action for failure to prosecute or, in the alternative, a default should not be

entered against Defendant. (Order to Show Cause dated Feb. 3, 2019.) After neither party responded to the Order to Show Cause, on March 8, 2019, Judge Levy *sua sponte* issued the R&R recommending that the Court dismiss Plaintiff's claims without prejudice for failure to prosecute. (R&R 1.) None of the parties have objected to the R&R.

II. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "[F]ailure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object." *Eustache v. Home Depot U.S.A., Inc.*, 621 F. App'x 86, 87 (2d Cir. 2015) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's Report and Recommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

For the foregoing reasons, the Court dismisses the action for Plaintiff's failure to prosecute. The Clerk of Court is directed to close this case.

Dated: April 4, 2019
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge